

No. 7519

In the United States Circuit Court of
Appeals for the Ninth Circuit

GUY T. HELVERING, COMMISSIONER OF INTERNAL
REVENUE, PETITIONER

v.

ELMER D. BRYSON, RESPONDENT

ON PETITION FOR REVIEW OF DECISION OF THE UNITED
STATES BOARD OF TAX APPEALS

BRIEF FOR THE PETITIONER

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FILED

JAN 18 1935

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OPINIONS BELOW

The only previous opinions in this case are those of the United States Board of Tax Appeals, one of which (R. 23-34) is reported in 22 B. T. A. 395, and the others (R. 35-59) are unreported.

JURISDICTION

This proceeding involves deficiencies in income and profits taxes for the years 1917 and 1918, in the respective amounts of \$2,863.42 and \$5,741.89, and is taken from the decision (order

of redetermination) of the Board of Tax Appeals entered January 26, 1933 (R. 56-59). The case is brought to this Court by petition for review filed April 19, 1933 (R. 59-69), pursuant to the provisions of the Revenue Act of 1926, Sections 1001-1003, c. 27, 44 Stat. 9 as amended by the Revenue Act of 1932, Section 1101, c. 209, 47 Stat. 169.

QUESTION PRESENTED

Whether the liability of respondent, as transferee of the assets of the Bryson-Robison Corporation, for income- and profits-tax deficiencies due from that corporation for 1917 and 1918, is barred by the statute of limitations.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, page 22.

STATEMENT

The facts as found by the Board of Tax Appeals (R. 25-29, 43-44, 47-49) are substantially as follows:

In 1916 the Bryson-Robison Corporation was organized under the laws of the State of Washington, for the purpose of engaging in farming, raising sheep, and operating a sheep ranch. Its stock was divided equally between the respondent, Bryson, and one Robison. Robison was president and Bryson was secretary and treasurer. No formal corporate meetings were held and no

regular set of books or accounts was kept. The corporation engaged in business until June 4, 1919, when Bryson purchased Robison's stock and interest, took possession of the corporation's assets and operated the business thereafter as an individual. The corporation was stricken from the records on July 1, 1921, and was further stricken from the records and dissolved July 1, 1924, for failure to pay state license fees, the last fee having been paid for the fiscal year ended June 30, 1919 (R. 25-26).

The corporation filed its income-tax return for 1917 on March 30, 1918, and filed its income-tax return for 1918 on June 16, 1919 (R. 44).

On February 12, 1923, Mr. Bryson executed a waiver agreeing to an extension of time to one year after date for assessment of 1917 income taxes against the corporation. On January 2, 1924, Mr. Bryson executed an unlimited waiver in respect of 1917 and 1918 income taxes of the corporation. Both of these waivers were signed by him as former secretary of the corporation. The waiver of January 2, 1924 was accompanied by a letter signed by Mr. Bryson's lawyer explaining that the corporation was no longer in existence and that Bryson had authority to sign only as an individual who was formerly secretary (R. 27-29).

The waiver of January 1924 was as follows (R. 28-29) :

INCOME AND PROFITS TAX WAIVER

In pursuance of the provisions of subdivision (d) of Section 250 of the Revenue Act of 1921, Bryson-Robinson Corp., of Walla Walla, Washington, and the Commissioner of Internal Revenue, hereby consent to a determination, assessment, and collection of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of the said Corporation for the years 1917 and 1918 under the Revenue Act of 1921, or under prior income, excess-profits, or war-profits tax Acts, or under Section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, irrespective of any period of limitations.

(Sgnd.) ELMER D. BRYSON,
Former Secretary of the Bryson-Robison Corp., Taxpayer,
 (Sgnd.) D. H. BLAIR, c.,
Commissioner.

The accompanying letter was as follows (R. 47-49):

COMMISSIONER OF INTERNAL REVENUE,

Washington, D. C.
 SIR: Re: Your IT:CA:Ms. 2506-WHS-App.

Elmer D. Bryson has handed me your office letter of the 19th inst. addressed to Bryson-Robison Corporation, in his care, advising that it will be necessary for this corpora-

tion within twenty days from the date of your letter to advise you of its acquiescence in the determination of net income and invested capital as found by the Revenue Agent's report dated October 22, 1923, in order that you may further consider an application for computation of tax under the provisions of Section 210, Revenue Act 1917 and Sections 327-8, Revenue Act 1918.

You have already been informed that this corporation has been entirely out of business since July 1919, and since that date has not owned or possessed any property of any character and the corporation has long since been stricken from the corporate rolls of this state where it was incorporated. It has not functioned in any manner since that date, and being stricken from the corporate rolls naturally the former officers of the corporation cannot legally presume to act for it since it no longer exists.

During the life of the corporation Elmer D. Bryson was secretary of the corporation, but will not presume to assume to act in that capacity after all of these years since its dissolution. The only way he could make a report would be that as that of an individual, who was formerly secretary of a corporation which has been defunct for a period of over four and one-half years, and during which period it has neither functioned nor owned any property.

Your office letter above referred to is being by him referred to Cosper Accounting

Company, who has been looking after this matter and it will probably give your letter such further attention and reply as it deems proper and necessary. We deemed it proper that this status of affairs should now again be called to your attention, as no former officer will assume any authority not vested in him.

Yours very truly,

HERBERT C. BRYSON.

Deficiencies were assessed against the taxpayer corporation on March 21, 1924, for 1917, and on September 1, 1925, for 1918. The sixty-day letters to respondent and Robison as transferees were mailed November 3, 1926. The net value of the assets transferred to Bryson exceeded the amount of the deficiencies (R. 29).

The Board of Tax Appeals held that the waivers were not sufficient to extend the periods for assessment and collection of the 1917 and 1918 taxes against the transferor corporation and that since assessment and collection of the liability of the transferor corporation were barred prior to passage of the Revenue Act of 1926, assessment and collection of the liability of respondent, as transferee, were also barred.

SPECIFICATION OF ERRORS TO BE URGED

The Board of Tax Appeals erred:

1. In holding that assessment and collection of income and profits taxes due from Bryson-Robi-

son Corporation, against respondent as a transferee of the property of that corporation, was barred by the statute of limitations.

2. In holding that the waivers executed by the transferee of the assets of the original taxpayer, purporting to extend the time of assessment and collection against the original taxpayer, were ineffective to extend the statute of limitations either as to the original taxpayer or as to the transferee.

3. In failing to hold that the waiver of January 2, 1924, was executed for and on behalf of the Bryson-Robison Corporation and was binding upon it as well as upon respondent individually.

4. In failing to find that by reason of his execution of the waiver of January 2, 1924, respondent secured a postponement to a time beyond the period of limitation, except as extended by the waiver, of the assessment and collection of additional income and profits taxes due from Bryson-Robison Corporation for the years 1917 and 1918.

5. In failing to hold that respondent was estopped to deny the validity of the waiver.

SUMMARY OF ARGUMENT

I. The Board of Tax Appeals erred in holding that the waiver of January 1924 did not bind the corporation, because (1) the corporation was still in existence although it was inactive at the time and its name had been stricken from the records of the Secretary of State of the State of Wash-

ington; (2) the waiver recites that Bryson-Robinson Corporation consents to the extension; (3) the waiver is signed by respondent as former secretary of the corporation; (4) respondent was then the sole stockholder of the corporation and the only person interested in it; (5) subsequent to dissolution, respondent would have been charged with collecting the assets of the corporation and discharging its obligations; and (6) even if the corporation had been dissolved, the execution of the waiver by respondent would have been clearly sufficient to extend the time for assessment of corporate taxes.

II. In any event, respondent as transferee was clearly bound by the waiver, and under *Helvering v. Newport Co.*, 291 U. S. 485, it is immaterial whether or not the statute of limitations had run against assessment of the corporation, for it is undisputed that assessment against respondent as transferee in November 1926 was made within the extended period for assessment provided by the waiver.

III. Apart from the technical aspects of this case, respondent was benefited by execution of the waiver and by signing the same he estopped himself to question its validity.

I

ARGUMENT

The waivers of February 1923 and January 1924 were clearly sufficient to extend the periods for assessment of 1917 and 1918 taxes against the Bryson-Robison Corporation; and such taxes were duly assessed in March 1924 and September 1925 so that assessment against respondent as transferee in November 1926 was timely and entirely in order under the provisions of section 280 of the Revenue Act of 1926

The waiver of February 1923 was a one-year waiver, purporting to extend to February 12, 1924, the period for assessment and collection of 1917 taxes. The waiver of January 1924 was an unlimited waiver with respect to 1917 and 1918 taxes. Without any waiver, the statute of limitations would have run against 1917 taxes on March 30, 1923 (five years after filing of the return) and against 1918 taxes on June 16, 1924 (five years after filing of the return). See Revenue Act of 1921, Sec. 250 (d), and Revenue Act of 1924, Sec. 277 (a) (2), Appendix, *infra*. As it is settled that a waiver is effective when executed after the running of the statute (*McDonnell v. United States*, 268 U. S. 420), it is only necessary to consider whether the waiver of January 2, 1924, was sufficient to extend the periods for assessment against the corporation of 1917 and 1918 taxes so as to make timely the assessments of March 1924 and September 1925. The Board of Tax Appeals decided this question adversely to the Commissioner on the ground that the waiver, when read in the light of a letter which accompanied it, showed

clearly that it was not executed for the corporation, but merely by respondent as an individual. The waiver and letter are hereinbefore set forth in full (pp. 4, 5, and 6).

Mr. Elmer D. Bryson, respondent herein, was on January 2, 1924, the sole stockholder of the corporation and its former secretary and treasurer. There was no other person who had any interest in it. The statement in the letter [written by respondent's lawyer] to the effect that the corporation was no longer in existence was contrary to the law of the State of Washington. The certificate of the Secretary of State of the State of Washington (R. 46) recites that the corporation was stricken from the records on July 1, 1921, for failure to pay taxes, and that the corporation was further stricken from the records and dissolved July 1, 1924; also that the corporation has had no legal existence since July 1, 1921, pursuant to Chapter 140, Laws of 1907. Upon the basis of such recitations in the Secretary of State's certificate, the Board of Tax Appeals concluded that the date of dissolution was July 1, 1921 (R. 46).

Examination of the pertinent Washington statutes shows the conclusion of the Board to be plainly erroneous as a matter of law. These statutes are contained in (1) Laws of 1907, Chapter 140, Sec. 7; (2) Laws of Extraordinary Session, 1909, Chapter 19; (3) Laws of 1911, Chapter 41; and (4) Laws of 1923, Chapter 144, Secs. 5 and 6. These statutes must be read together to obtain the intent of the

legislature with respect to the situation in the instant case. Section 5 of Chapter 144 of the Laws of 1923 provided that any corporation whose name had been stricken from the records of the Secretary of State for failure to pay license fees for two years might apply for reinstatement at any time within three years after its name had been stricken from the records.

Section 4 of Chapter 19 of the Laws of Extraordinary Session, 1909, provided that if, during the period named within which a corporation might make application for reinstatement, such corporation should not make such application, the corporation should be dissolved and the trustees should hold the title to its property for the benefit of stockholders and creditors. Section 5 of Chapter 144 of the Laws of 1923 further provided that any corporation stricken from the records and dissolved might thereafter hold a meeting of stockholders, in the same manner as provided during its corporate existence, and pass such resolutions as might be necessary to close out its affairs and wind up its business. Section 5 of Chapter 19 of the Laws of Extraordinary Session, 1909, provided that the name of no corporation stricken from the records should be adopted by another corporation until the expiration of the time within which application for reinstatement might be made.

Those statutory provisions (other than the ones adopted in 1923) were considered in the case of

State ex rel. Preston Mill Co. v. Howell, 67 Wash. 377, 121 Pac. 861. That case involved an application for a writ of mandamus to the Secretary of State of the State of Washington, directing him to accept fees from relator corporation and issue a license to it. In granting the writ, the court said (pp. 381-382):

So that the law, as it now reads, provides that a corporation failing to pay its annual license fees for two years shall be stricken from the records of the office of the secretary of state; that every corporation so stricken may apply at any time thereafter for reinstatement, and when so applying shall be reinstated upon payment of all license fees and penalties then due, together with an additional penalty of \$100. It will be noted that § 3715d, providing for the dissolution of the corporation for failing to apply within the time in which application might be made for reinstatement, which time was six months as fixed in the act of 1909, has now no force, since the act of 1911 changed the time in which such application might be made from six months to "any time after its name had been stricken from the records"; and, since the dissolution was to take effect at the expiration of the time fixed in which application for reinstatement might be made, and that time is now, under the amendment of 1911, any time after the striking of the name, there is now no time fixed for such dissolution. Section 3715a, as

amended by the act of 1911, reads, "any corporation stricken from the records and dissolved as provided in this chapter", may hold meetings and pass resolutions necessary to close out its affairs and such resolution of such "stricken and dissolved corporation" is validated and approved.

There is no provision, however, in this chapter for the dissolution of such corporation, as to how or when it shall take place; the only penalty to the offending corporation provided for in the act being the striking of its name from the official records of the secretary of state. The framers of this act evidently had in mind the provisions of § 3715d, which made provision for dissolution under the act of 1909. But they failed to fix a time in which the provisions of that section could become operative. The result is there is now no time in which this section, the only one containing any provision for the dissolution of corporations for failure to pay license fees, can become operative. When, therefore, relator applied to the secretary of state to accept its license fee, he should have done so, as it had made full compliance with the law, and within the time provided by the law in force at the time the application was made.

Subsequent to the foregoing decision, the law was amended so as to provide for a period of three years within which a corporation might apply for reinstatement as above set forth (Laws of 1923, c.

144, Sec. 5, *supra*), but the principles laid down in that decision were not otherwise affected.

See also *Patterson v. Ford*, 167 Wash. 121, 8 Pac. (2d) 1006; *Moore v. Los Lugos Gold Mines*, 172 Wash. 570, 21 Pac. (2d) 253.

Applying to the instant case the laws as above set forth, it is clear that the Bryson-Robison Corporation was not dissolved on January 2, 1924, the date of the waiver. The corporation's name was stricken from the records of the Secretary of State on July 1, 1921, but the period for application for reinstatement was of indefinite duration under Section 1 of Chapter 41 of the Laws of 1911 and the three-year period prescribed by the Laws of 1923, *supra*, did not expire until July 1, 1924; so that until that date the corporation continued to exist, having the right to apply for reinstatement and having the exclusive right to its corporate name. Respondent Bryson was the sole stockholder, the sole remaining officer and director (trustee) and the transferee of the corporation's business and assets.

Under such circumstances, the conclusion of the Board of Tax Appeals that Bryson had no authority to act for the corporation in signing the waiver and that he did not purport to do so is manifestly unsound. The waiver recited that the corporation and the Commissioner agreed to an extension of time for assessment and it was signed by Bryson as former secretary of the corporation. While it is true that the accompanying letter stated that

the corporation was dissolved and that Bryson was without authority to act for it, such statement was merely an erroneous conclusion as to the law for the reasons above stated.

In the case of *California Iron Yards Co. v. Commissioner*, 47 F. (2d) 514 (C. C. A. 9th), this Court decided practically the same question as here involved. That case involved the validity of a waiver executed in behalf of a California corporation suspended for nonpayment of license tax. The taxpayer contended that it was prohibited by the state law from making the waiver in question. In holding the waiver valid, this Court said (p. 516) :

Moreover, if we concede that the corporation was prohibited by the terms of the state statute from making the waiver in question, such state statute would not control the rights of the corporation or of the government, for the authority to make the waiver in question is not derived from the state of California, but is derived from the United States, and, so long as the corporation retains its status as a taxpayer, it is authorized by the federal government to make such waiver, and the inhibition of the state statute against such action is unavailing. * * *

See also *Angelus Building & Investment Co. v. Commissioner*, 57 F. (2d) 130, 132 (C. C. A. 9th), certiorari denied, 286 U. S. 562.

However, we submit that even if the corporation in the instant case had been dissolved prior to

execution of the waiver, Bryson would still have had power to negotiate with the Government in respect of its income-tax liability. He was the sole remaining stockholder and would have been empowered under Section 5 of Chapter 144 of the Laws of 1923, *supra*, to close out its affairs and wind up its business. He was also the sole remaining director or trustee and under Section 4 of Chapter 19 of the Laws of Extraordinary Session, 1909, he would have been vested with title to the corporate property for the benefit of its stockholders and creditors. See also *Washington Laws of 1866*, p. 64, Sec. 23, which provides that the trustees at time of dissolution of a corporation shall have full power to sue for debts and property of the corporation, by the name of the trustees of the corporation, collect and pay the outstanding debts, settle all its affairs, and divide among the stockholders the money and other property remaining after payment of debts and expenses.

In view of such broad powers, it is perfectly clear that Bryson would have had authority to settle the taxes of the corporation even had it been dissolved and in connection therewith he would clearly have had authority to sign the waiver in question. His action would certainly have been effectual to extend the time for assessment of corporate taxes. Cf. *Soderberg v. McRae*, 70 Wash. 235, 126 Pac. 538; *Helvering v. South Penn Oil Co.*, 68 F. (2d) 420 (App. D. C.).

To summarize, it seems clear that the waiver of January 1924, bound the corporation, because (1) the corporation was still in existence although it was inactive at the time and its name had been stricken from the records of the Secretary of State; (2) the waiver recites that Bryson-Robison Corporation consents to the extension; (3) the waiver is signed by respondent as former secretary of the corporation; (4) respondent was then the sole stockholder of and the only person interested in the corporation; (5) subsequent to dissolution, respondent would have been charged with collecting the assets of the corporation and discharging its obligations; and (6) even if the corporation had been dissolved, the execution of the waiver by respondent was clearly sufficient to extend the time for assessment of corporate taxes.

II

Assuming that the Board of Tax Appeals correctly held that the execution of the waiver by respondent was only binding upon him individually, it is immaterial whether or not the time was extended to permit action against the corporation

The Board of Tax Appeals held that the waiver of January 2, 1924, was executed by respondent individually as transferee of the assets of the original taxpayer, but that it was ineffective to extend the statute of limitations as to the original taxpayer; that assessment and collection of 1917 and 1918 taxes against the corporation were 'barred

prior to adoption of the Revenue Act of 1926 and hence assessment and collection of the liability of respondent as transferee were also barred. The authorities relied on by the Board included *Newport Co. v. Commissioner*, 22 B. T. A. 833. The decision in that case was affirmed upon review by the Circuit Court of Appeals for the Seventh Circuit (65 F. (2d) 925); but the Supreme Court of the United States granted a writ of certiorari upon petition by the Government (290 U. S. 620), and reversed the judgment of the Court of Appeals. *Helvering v. Newport Co.*, 291 U. S. 485.

In that case the facts were that the Chemical Works, a Maine corporation, after it had filed its tax return for 1917, transferred all its assets to a Delaware corporation, which, as consideration for the transfer, issued its stock to the stockholders of the transferor and assumed all liabilities of the transferor. The Chemical Works was dissolved in 1920. The period of limitation for the assessment and collection of the 1917 taxes expired in April 1923. The question was whether this period was extended by waiver so as to include a deficiency assessment made in March 1927. The Delaware corporation, transferee and taxpayer in the proceedings under review, contended that a waiver of November 6, 1926, executed by it, was ineffective because the statute had run in favor of the original taxpayer. The Court held that the waiver extended the time for assessment against the transferee regardless of the fact that

assessment against the original taxpayer may have been barred prior to the Revenue Act of 1926.

Assuming for argument that the waiver of January 2, 1924, was executed by respondent individually and not as authorized agent for the Bryson-Robison Corporation, the *Newport Co. case* is indistinguishable from the instant case. In the *Newport Co. case* it was held immaterial that the statute of limitations barred the Government from proceeding against the original taxpayer and the assessment in March 1927, against the transferee was upheld. In the instant case, it is accordingly not material whether the waiver of January 1924, extended the Government's time to proceed against the original taxpayer; and since the respondent contended and the Board of Tax Appeals held that the waiver was signed by him as an individual, there can be no question but that the assessment made against him in November 1926, was timely.

See also *Kieckhefer v. United States* (C. Cls.), decided Nov. 5, 1934, found in 343-A C. C. H., par. 9504; *Breene v. United States* (C. Cls.), decided Nov. 5, 1934, found in 343-A C. C. H., par. 9503; *Lucas v. Hunt*, 45 F. (2d) 781 (C. C. A. 5th); *Helvering v. South Penn Oil Co.*, *supra*; *Pacific Coast Steel Co. v. McLaughlin*, 61 F. (2d) 73 (C. C. A. 9th), affirmed 288 U. S. 426; *Commissioner v. Wolf Co.*, 69 F. (2d) 1001 (C. C. A. 3d); *Wonder Bakeries Co. v. United States*, 6 Fed. Supp. 228 (C. Cls.).

III

Apart from technical considerations, the purpose of the waiver was to permit consideration of taxpayer's claim for special assessment; the extension of time was for the benefit of respondent as transferee and real party in interest, and it would be most inequitable to hold that the waiver was invalid and that assessment was barred by the statute of limitations

In view of the fact that the extensions of time for assessment were necessitated by the respondent's claim for special assessment of income and profits taxes of the corporation for 1917 and 1918, under the provisions of Section 210, Revenue Act of 1917, and Sections 327 and 328 of the Revenue Act of 1918; and in view of the additional facts that by reason of executing the waivers, respondent secured consideration of the claims for abatement of the additional income and profits taxes assessed against the corporation for the year 1917, and secured an allowance of the claims to the extent of \$3,033.44, respondent should not be permitted to deny the validity and efficacy of the waivers. Except for the waivers, the Commissioner would have made the assessments within the original periods.

Our view is amply supported by the case of *Lucas v. Hunt, supra*. In that case the question was whether an assessment for 1919 taxes made against Hunt as transferee of the assets of a taxpayer corporation, was barred by the statute of limitations. The corporation was dissolved in 1921 under a statute providing for continuance of

existence and management by liquidators for three years. Hunt was president of the corporation and became a liquidator. In 1924, more than three years after dissolution of the corporation, he executed a tax waiver in its name. The defense made the contention that the waiver was invalid because executed after expiration of the three year period. The court held that Hunt by signing the waiver estopped himself to question its validity, with the result that he was bound to respond to the assessment to the extent of funds in his hands which belonged to the dissolved corporation taxpayer.

CONCLUSION

The decision of the Board of Tax Appeals should be reversed to the extent that it holds that respondent is not liable for any deficiency of the Bryson-Robison Corporation for 1917 and 1918.

Respectfully submitted.

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Assistant Attorney General.
SEWALL KEY,
L. W. POST,
Special Assistants to the
Attorney General.

JANUARY 1935.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 280. (a) The amounts of the following liabilities shall, except as herein-after in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distress and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

* * * * *

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer, or

(2) If the period of limitation for assessment against the taxpayer expired before the enactment of this Act but assessment against the taxpayer was made within such

period, then within six years after the making of such assessment against the taxpayer, but in no case later than one year after the enactment of this Act. (U. S. C. App., Title 26, Sec. 1069.)

Revenue Act of 1921, c. 136, 42 Stat. 227:

SEC. 250. (d) The amount of income, excess-profits, or war-profits taxes due under any return made under this Act for the taxable year 1921 or succeeding taxable years shall be determined and assessed by the Commissioner within four years after the return was filed, and the amount of any such taxes due under any return made under this Act for prior taxable years or under prior income, excess-profits, or war-profits tax Acts, or under section 38 of the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, shall be determined and assessed within five years after the return was filed, unless both the Commissioner and the taxpayer consent in writing to a later determination, assessment, and collection of the tax; * * *

Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 277. (a) (2) The amount of income, excessive-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes", approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes", approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended,

shall be assessed within five years after the return was filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period (U. S. C. Title 26, Sec. 1057).

Treasury Regulations 69, promulgated under the Revenue Act of 1926:

ART. 1291. *Claims in cases of transferred assets.*—The amount for which a transferee of the property of a taxpayer is liable, at law or in equity, and the amount of the personal liability of a fiduciary under section 3467 of the Revised Statutes, in respect of any income or profits tax imposed by Title II of the Revenue Act of 1926, or by prior Acts, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee or such fiduciary, as the case may be, and collected and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency imposed by Title II of the Revenue Act of 1926, except as hereinafter provided. The provisions relating to delinquency in payment after notice and demand and the amount of interest attaching because of such delinquency, the authorization of distress and proceedings in court for collection, the prohibition of claims for abatement and claims and suits for refund, the filing of a petition with the Board of Tax Appeals, and the filing of a petition for review of the Board's decision, are included in the sections and articles relating to deficiencies in tax imposed by Title II.

The term "transferee" as used in this article includes an heir, legatee, devisee, distributee of an estate of a deceased person,

the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation, a party to a reorganization as defined in section 203, and all other classes of distributees.

The period of limitation for assessment of the liability of a transferee or of a fiduciary, referred to in the first paragraph of this article, is as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer (see sections 277, 278, and 283 (1), and articles 1271 and 1272); or

(2) If the period of limitation for assessment against the taxpayer expired before the enactment of the Revenue Act of 1926, but assessment against the taxpayer was made within such period, then within six years after the making of such assessment against the taxpayer, but in no case later than one year after the enactment of the Revenue Act of 1926.

(3) If a court proceeding against the taxpayer for the collection of the tax has been begun within the period of limitation for the bringing of such proceeding, then within one year after the return of execution in such proceeding.

For the purpose of determining the period of limitation for assessment against a transferee or a fiduciary, if the taxpayer is deceased, or, in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

If a notice of the liability of a transferee or the liability of a fiduciary has been mailed to such transferee or to such fidu-

ciary under the provisions of section 274 (a) (see Article 1232), then the running of the statute of limitations shall be suspended for the period during which the Commissioner is prohibited from making the assessment, and for 60 days thereafter.

The provisions of section 280 do not apply in any suit or proceeding for the enforcement of the liability of a transferee, or the liability of a fiduciary under section 3467 of the Revised Statutes, which was pending at the time of the enactment of the Revenue Act of 1926.